

REMARKS

Applicants have amended claims 1, 8, 16 and 22 to expedite prosecution. Specifically, claim 1 has been amended to correct an obvious error in view of the specification. As described therein, e.g., pars. [0017], and the last sentence of par. [0031], the bacteria naturally have no lag time upon re-hydration. Claim 8 has been amended to correct antecedent basis by deleting the term “still”. As suggested by the Examiner, claim 16 has been amended to an independent product by process claim to include all the limitations of claim 1. The amendment is clerical. Claim 22 has been amended to make explicit that which was implicit, namely, that the bacteria have no lag time upon rehydration (see also, e.g., pars. [0017] and [0031] of the specification). Accordingly, no new matter has been introduced by the amendments and their entry is respectfully requested.

Claim Rejections - 35 USC § 112

Claims 1-9, 11-16 and 18-22 were rejected as allegedly not complying with 35 U.S.C. 112, first paragraph written description requirement. Specifically, the Office indicated that contrary to the explanation in the specification, claim 1 referred to bacteria with lag time upon hydration. In view of the amendment to claim 1, Applicants respectfully submit that this rejection has been obviated.

The Office further alleged that the “step of concentration” recited in claims 14 and 15 are not explained in the specification.

Applicants respectfully disagree and submit that the rejection should be withdrawn for the following reasons.

The specification particularly sets forth that “the step of concentration may comprise at least one of centrifugation, dia-centrifugation, filtration, and dia-filtration” (par. [0016]). Paragraph [0030] further explains that “if a higher concentration ... is desired, the ferment can be subjected to dia-centrifugation to increase its concentration...”. A phrase referring to “concentrating a filtrate” is an art known term and means to increase concentration of the filtrate. Accordingly, Applicants respectfully submit that the phrase “step of concentration” is unequivocally clear and sufficiently described in the specification. The rejection should therefore be withdrawn.

Claim 8 was rejected as allegedly not complying with 35 U.S.C. 112, second paragraph definiteness requirement. Specifically, the Office noted that the term “still contains nutrients” on line 2 has no antecedent basis. In view of the amendment to claim 1, Applicants respectfully submit that this rejection has been obviated.

Claim Rejections - 35 USC § 103(a)

Claim 22 was rejected under 35 USC § 103(a) as allegedly obvious over Ergashev, Kamer (DE 19523334) or Kamer(EP 1186581). Specifically, the Office alleged that these references teach a method of applying bacteria on to a granulated fertilizer. The Office admitted that the references do not teach application rate of the fertilizer being less than 3 liters bacterial ferment per ton of granular fertilizer. However, the Office takes the position that this would have been an obvious optimization step only.

The Office suggested that this rejection would be overcome by amending claim 16 as an independent product by process claim including all the limitations set forth in claim 1 and indicating both in claim 16 and in claim 22 that the bacteria have no lag time upon rehydration. Applicants appreciate the Office suggestion. Accordingly, Applicants have amended claims 16 and 22.

The prior art does not disclose a fertilizer made by a process that results in bacteria having no lag time.

Accordingly, in view of the amendments and the above, Applicants respectfully submit that the rejection should be withdrawn.

In view of the above, Applicants respectfully submit that all the claims are in condition for allowance. Early and favorable consideration is sincerely solicited.

Applicants believe no fees are currently due with the response. However, in the event that additional fees are due, the Commissioner is hereby authorized to charge Nixon Peabody Deposit Account No. 50-0850. Any overpayments should also be deposited to said account.

Date: August 12, 2010

Customer No.: 50828

Respectfully submitted,
/Leena H. Karttunen/

David S. Resnick (Reg. No. 34,235)
Leena H. Karttunen (Reg. No. 60,335)
Nixon Peabody LLP
(617) 345-6057 / 1367